

1 understanding as to whether Grace  
2 provided indemnification to BNSF for any  
3 personal injury or death that resulted  
4 from Grace's operations of the suspension  
5 bridge and loading dock?

6 MS. HARDING: Object to the  
7 form.

8 MR. LIESEMER: Object to the  
9 form of the question.

10 THE WITNESS: Yes.

11 (Hughes-4 marked for  
12 identification at this time.)

13 BY MS. CASEY:

14 Q. Take a look at exhibit  
15 Hughes-4 for me, please.

16 A. Sure.

17 Q. Do you recognize this  
18 document?

19 A. I think I have seen it  
20 before.

21 Q. Do you know what this  
22 document is?

23 A. Based on my review this  
24 afternoon, it is an agreement between

1 purchase or obtain insurance in its own  
2 name to insure its indemnification  
3 obligation to BNSF?

4 MS. HARDING: Object to  
5 form.

6 THE WITNESS: I don't know.

7 BY MS. CASEY:

8 Q. And then moving on to  
9 paragraph 9, are you aware of any  
10 policies that were purchased for BNSF in  
11 accordance with paragraph 9 of this  
12 agreement?

13 A. As I said, I am not sure I  
14 have seen any policies. I do recall that  
15 there is correspondence in the file that  
16 would indicate that there may have been  
17 policies purchased.

18 Q. Have you seen any  
19 certificates of insurance indicating that  
20 policies have been purchased?

21 A. Not that I specifically  
22 recall.

23 MS. CASEY: Okay. On the  
24 record real quick, I am going to

1 a break so I have time to read all  
2 the documents that have been  
3 marked and just take a ten-minute  
4 break?

5 MS. CASEY: Yes.

6 MS. HARDING: I want to make  
7 sure that I am making my proper  
8 objections. Thanks.

9 (There was a break from 2:43  
10 p.m. to 2:57 p.m.)

11 THE WITNESS: Before we go  
12 further, in reviewing the  
13 documents here, I think I  
14 misspoke, I had it reversed in  
15 looking at the correspondence in a  
16 couple of things you said.

17 The certificates of  
18 insurance and the correspondence  
19 from 1961, my understanding is  
20 that there is evidence that Grace  
21 purchased insurance for the  
22 benefit of the Burlington Northern  
23 related to the operation of the  
24 loading facility out in Libby,

1 Montana.

2 I haven't seen -- I am not  
3 familiar with the fact that  
4 Burlington Northern was  
5 specifically added as an insured  
6 to Grace's own general liability  
7 policies, and I think I had that  
8 reversed when we were speaking a  
9 moment ago.

10 BY MS. CASEY:

11                   Q.        Is it your understanding  
12        that to the extent any policy was  
13        purchased naming BNSF as the insured,  
14        that it is the subject of a settlement  
15        agreement with the insurers and Grace?

16 MS. HARDING: Object to  
17 foundation to the extent that you  
18 know.

19 MR. SCHIAVONI: Vague and  
20 ambiguous.

24 BY MS. CASEY:

1 MR. LEWIS: He testified  
2 after a break that Grace purchased  
3 independent policies that provided  
4 coverage to BNSF.

5 BY MR. LEWIS:

6 Q. That was your testimony,  
7 correct?

8 A. I don't think that's what I  
9 testified to. I think that prior to the  
10 break, I had testified that there were  
11 two -- it is my understanding there were  
12 two allegations by BNSF of possible  
13 insurance coverage related to the loading  
14 facility at Libby, Montana in the  
15 railroads, the right-of-way, and that I  
16 had testified beforehand that I had heard  
17 and was aware of documents and letters  
18 concerning the existence of support for  
19 the allegation that they had been named  
20 as an additional insured under the Grace  
21 comprehensive general liability policies.

22 And I think I corrected that  
23 and said that the letters and the  
24 information I was talking about indicated

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1 that there were policies that Grace had  
2 purchased and that -- for BNSF rather  
3 than being named as additional insured  
4 under the Grace policies.

5 Q. That's my understanding of  
6 your testimony, sir. So Grace purchased  
7 policies that covered BNSF, correct?

8 MR. SCHIAVONI: Objection.

9 That's not what he testified to.

10 THE WITNESS: I haven't seen  
11 the policies. I said I was shown  
12 correspondence, and the  
13 correspondence I was referring to  
14 that I had seen before indicated  
15 that there were policies of that  
16 kind. But I hadn't seen the  
17 policies. I hadn't seen the  
18 policies.

19 BY MR. LEWIS:

20 Q. You had been identified as  
21 Grace's 30(b)(6) designated witness on  
22 the subject of these insurance policies.

23 Is it your testimony now --

24 A. Well, I testified --

1 Q. Well, I am asking -- no, I  
2 am asking you what you know about that.

3 From your own knowledge, did  
4 Zonolite or Grace, or and Grace, agree to  
5 indemnify the railroad contractually for  
6 liability relating to that siding in  
7 Libby?

8 MS. HARDING: I will object  
9 on foundation to the extent you  
10 know.

11 MR. LEWIS: If he doesn't  
12 know, he can say he doesn't know.

13 THE WITNESS: I don't know.  
14 I would have to see a document,  
15 this document and certainly  
16 correspondence which would imply  
17 that. But I don't see anything  
18 directly evidencing that kind of  
19 agreement between Grace, Zonolite,  
20 and the railroad.

21 BY MR. LEWIS:

22 Q. Did Zonolite agree to  
23 purchase insurance at any time to  
24 provide -- to provide coverage for BNSF,

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OBJ:  
CFS  
LF  
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1 if you know?

2 MR. SCHIAVONI: Objection to

3 form, no foundation.

4 THE WITNESS: Again, there

5 are documents that would indicate

6 that that was the case, but I

7 haven't seen any of the policies.

8 BY MR. LEWIS:

9 Q. Does Grace have copies of

10 the insurance policies?

11 MS. HARDING: I will object

12 to the form.

13 THE WITNESS: Grace has

14 copies of insurance policies.

15 BY MR. LEWIS:

16 Q. We have requested those, and

17 Grace has not provided those to us.

18 Where are those policies kept?

19 MS. HARDING: Objection to

20 form. I think you asked him does

21 Grace have copies of insurance

22 policies, and he said yes, we have

23 copies of insurance policies.

24 Secondly, we have no